

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 e.Digital Corporation,

Civil No. 13cv2916 H (BGS)

12 Plaintiff,

13 v.

14 PATRIOT MEMORY, LLC,

15 Defendant.

**NOTICE AND ORDER FOR  
TELEPHONIC EARLY NEUTRAL  
EVALUATION CONFERENCE IN  
PATENT CASES**

16 IT IS HEREBY ORDERED that an Early Neutral Evaluation of your case  
17 will be held on May 28, 2014, at 2:00 p.m. before United States Magistrate Judge  
18 Bernard G. Skomal. Due to limited availability on the Court's calendar, the  
19 conference shall be telephonic, with attorneys only. Plaintiff's attorney shall  
20 coordinate and initiate the conference call.

21 **The following are mandatory guidelines for the parties preparing for  
22 the Early Neutral Evaluation Conference.**

23 1. **Purpose of Conference:** The purpose of the Early Neutral  
24 Evaluation Conference ("ENE") is to permit an informal discussion of every aspect  
25 of the lawsuit in an effort to achieve an early resolution of the case. All conference  
26 discussions will be informal, off the record, privileged and confidential. If the  
27 parties agree that a further settlement conference, in-person, with attorneys and  
28

1 parties, will be productive, one can be scheduled at the ENE.

2       **2. Confidential ENE Statements Required:** No later than **fourteen (14)**  
 3 **days before the ENE**, the parties must submit confidential statements of seven  
 4 pages or less directly to Judge Skomal. The statements must set forth the pertinent  
 5 legal and factual issues in the case, but should focus on issues most pertinent to  
 6 settling the matter. These statements shall not be filed or served on opposing  
 7 counsel. ENE statements must be emailed to **efile\_Skomal@casd.uscourts.gov.**

8       **3. New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's  
 9 counsel shall give notice of the ENE to parties responding to the complaint after the  
 10 date of this notice.

11      **4. Case Management Under the Amended Federal Rules and Local**  
 12 **Patent Rules:** In the event the case does not settle at the ENE, the parties can  
 13 expect to end the ENE with Rule 26 compliance dates and deadlines, and a Case  
 14 Management Order including a Claim Construction briefing schedule and hearing  
 15 date. **Parties shall therefore meet and confer pursuant to Fed. R. Civ. P. 26(f)**  
 16 **no later than 21 days before the ENE:**

- 17       a. Any anticipated objections under Federal Rule of Civil Procedure  
 18           26(a)(1)(E) to the initial disclosure provisions of Federal Rule of  
       Civil Procedure 26(a)(1)(A-D) and the date of initial disclosures;
- 19       b. Whether the parties will request the preservation and production of  
 20           Electronically Stored Information ("ESI") and, if so:
  - 21           i. the nature, location, and scope of discoverable ESI;
  - 22           ii. the agreed form of production;
  - 23           iii. the agreed search methodology;
  - 24           iv. whether any proportionality issues exist and whether the parties  
       have identified issues with respect to inaccessible ESI;
- 25       c. Any proposed modification of the deadlines provided for in the  
 26           Patent Local Rules, and the effect of any such modification on the  
       date and time of the Claim Construction Hearing, if any;
- 27       d. The need for and specific limitations on discovery relating to claim  
 28           construction, including depositions of percipient and expert  
       witnesses; and  
       Any proposed modifications to the limitations on discovery imposed  
       under the Federal Rules of Civil Procedure or by local rule;

1                   e.     The need, if any, to phase damage discovery.

2                 The parties must include their positions with respect to the above issues in  
 3 a **Joint Discovery Plan** submitted to Judge Skomal's chambers, as well as filed on  
 4 the CM/ECF system at least **fourteen (14) days before the ENE**.

5                 The Court will issue an order following the ENE addressing these issues  
 6 and setting dates as appropriate.

7                 5.     **Requests to Continue an ENE Conference:** Local Patent Rule  
 8 2.1.a requires that an ENE take place within 60 days of the filing of the first answer.  
 9 Requests to continue ENEs are rarely granted. **Absent extraordinary**  
 10 **circumstances, requests for continuances will not be considered unless**  
 11 **submitted in writing no less than twenty-one (21) days prior to the scheduled**  
 12 **conference.**

13                 6.     **Settlement Prior to ENE Conference:** The Court encourages the  
 14 parties to work on settling the matter in advance of the ENE Conference. In the  
 15 event that the parties resolve the matter prior to the day of the conference, the  
 16 following procedures must be followed before the Court will vacate the ENE and  
 17 excuse the parties from appearing telephonically:

18                   A. The parties may file a Joint Motion to Dismiss and submit a  
 19 proposed order to the assigned district judge. If a Joint Motion to Dismiss is filed,  
 20 the Court will immediately vacate the ENE;

21                   B. If the parties settle more than 24 hours before the conference but  
 22 are not able to file a Joint Motion to Dismiss, they must file a Notice of Settlement  
 23 containing the electronic signatures of counsel for all settling parties and must also  
 24 identify a date by which the Joint Motion to Dismiss will be filed;

25                   C. If the parties settle less than 24 hours before the conference,  
 26 counsel for the settling parties must JOINTLY call chambers and inform the Court  
 27 of the settlement and receive Court permission to not appear at the ENE.

28                 Questions regarding this case or the mandatory guidelines set forth herein

1 may be directed to Skomal's research attorney at (619) 557-2993.

2 A Notice of Right to Consent to Trial Before a United States Magistrate  
3 Judge is attached for your information.

4 IT IS SO ORDERED.

5 DATED: March 25, 2014

6   
7 Hon. Bernard G. Skomal  
8 U.S. Magistrate Judge  
United States District Court

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1                   **NOTICE OF RIGHT TO CONSENT TO TRIAL**  
2                   **BEFORE A UNITED STATES MAGISTRATE JUDGE**

3                   In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby  
4                   notified that a U.S. Magistrate Judge of this district may, upon the consent of all  
5                   parties on form1a (available in the clerk's office), conduct any or all proceedings,  
6                   including a jury or non-jury trial, and order the entry of a final judgment. Counsel  
7                   for the plaintiff shall be responsible for obtaining the consent of all parties, should  
8                   they desire to consent.

9                   You should be aware that your decision to consent or not to consent is  
10                  entirely voluntary and should be communicated solely to the Clerk of Court. Only if  
11                  all parties consent will the Judge or Magistrate Judge to whom the case has been  
12                  assigned be informed of your decision.

13                  Judgments of the U.S. Magistrate Judges are appealable only to the U.S.  
14                  Court of Appeals in accordance with this statute and the Federal Rules of Appellate  
15                  Procedure.

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